

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,
as representative of
THE COMMONWEALTH OF PUERTO RICO, *et al.*,
Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS
(Jointly Administered)

**JOINT STATUS REPORT OF MOVANT AMBAC ASSURANCE CORPORATION AND
RESPONDENTS THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR
PUERTO RICO, AS REPRESENTATIVE OF THE COMMONWEALTH OF PUERTO
RICO, AND THE PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY
AUTHORITY WITH RESPECT TO THE RULE 2004 MOTIONS**

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801).

To the Honorable United States Magistrate Judge Judith Gail Dein:

Movant Ambac Assurance Corporation (“Ambac”) and Respondents the Financial Oversight and Management Board for Puerto Rico (the “Board”), as representative of the Commonwealth of Puerto Rico (the “Commonwealth” or “Debtor”) pursuant to section 315(b) of the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”), and the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF” and, together with the Board, the “Government Parties”),² respectfully submit this Joint Status Report in response to the Court orders dated January 23, 2020 (Dkt. No. 10332), February 6, 2020 (Dkt. No. 10727), June 24, 2020 (Dkt No. 13488), and September 3, 2020 (Dkt No. 14175).

I. PROCEDURAL BACKGROUND REGARDING AMBAC’S RULE 2004 REQUESTS

1. On October 28, 2019, Ambac filed *Ambac Assurance Corporation’s Motion for Entry of Order Authorizing Discovery Under Bankruptcy Rule 2004 Concerning Commonwealth Assets* (Dkt. No. 9022) (the “Assets Motion”), and *Ambac Assurance Corporation’s Motion for Entry of Order Authorizing Discovery Under Bankruptcy Rule 2004 Concerning Commonwealth Cash Restriction Analysis* (Dkt. No. 9023) (the “Cash Motion” and, together with the Assets Motion, the “Rule 2004 Motions”).

2. On November 8, 2019, the Government Parties filed the *Urgent Motion of Financial Oversight and Management Board for Puerto Rico and Puerto Rico Fiscal Agency and Financial Advisory Authority to Strike (A) Ambac Assurance Corporation’s Motion for Entry of Order Authorizing Discovery Under Bankruptcy Rule 2004 Concerning Commonwealth Assets [ECF No. 9022] and (B) Ambac Assurance Corporation’s Motion for Entry of Order Authorizing*

² Ambac and the Government Parties are collectively referred to as the “Parties.”

Discovery Under Bankruptcy Rule 2004 Concerning Commonwealth Cash Restriction Analysis [ECF No. 9023] and for Sanctions (Dkt. No. 9131) (the “Motion to Strike”).

3. On January 23, 2020, Judge Swain issued a memorandum order denying the Motion to Strike (Dkt. No. 10332) (the “Memorandum Order”). The Memorandum Order directed the Parties to meet and confer by February 3, 2020 concerning the scope and mechanics of discovery responsive to the Rule 2004 Motions. *Id.* at 9.

4. Since the Memorandum Order was entered, the Parties have filed periodic status reports regarding their meet-and-confers. Most recently, on September 1, 2020, the Parties filed the *Joint Status Report of Movant Ambac Assurance Corporation and Respondents the Financial Oversight and Management Board for Puerto Rico, as Representative of the Commonwealth of Puerto Rico, and the Puerto Rico Fiscal Agency and Financial Advisory Authority with Respect to the Rule 2004 Motions* (Dkt. No. 14150) (the “September 1 Joint Status Report”) that detailed their August 7, 2020 telephonic conference (the “August 7 Meet and Confer”), August 28, 2020 telephonic conference (the “August 28 Meet and Confer”), September 1, 2020 telephonic conference (the “September 1 Meet and Confer”), related communications, and agreed parameters for the resolution of disputed aspects of the Rule 2004 Motions. The Parties agreed in the September 1 Joint Status Report to file an updated Joint Status Report on September 30, 2020.

II. THE PARTIES’ PROGRESS SINCE THE PREVIOUS UPDATE TO THE COURT

5. Since the filing of the September 1 Joint Status Report, the Parties have continued to exchange correspondence³ and meet and confer telephonically. Specifically, the Parties met

³ The Parties’ positions with regard to each of Ambac’s requests since the filing of the September 1 Joint Status Report are memorialized in the following correspondence: (i) Ambac’s letter to the Government Parties dated September 10, 2020 (attached hereto as Exhibit A); (ii) Ambac’s letter to the Government Parties dated September 22, 2020 (attached hereto as Exhibit B); (iii) the Board’s letter to Ambac dated September 29, 2020 (attached hereto as Exhibit C); (iv) Ambac’s letter to the Government Parties dated

and conferred by telephone on September 18, 2020 (the “September 18 Meet and Confer”) and September 29, 2020 (the “September 29 Meet and Confer”). The current state of the Parties’ negotiations regarding each pending request is as follows:

A. Status of Assets Requests (Directed Principally to AAFAF)

6. The Parties continue to negotiate in good faith regarding Ambac’s Prioritized Assets Requests.

7. AAFAF’s investigation into the following issues remain ongoing: (i) whether additional documents related to prioritized Commonwealth assets identified by Ambac exist; (ii) whether any corrected or supplemental information related to previously produced certifications submitted by Commonwealth instrumentalities in response to an AAFAF memorandum exists; (iii) whether non-privileged property- or owner-specific information regarding unpaid *ad valorem* taxes is available, could be produced, and would not be unduly burdensome or disruptive to the Government’s operations to provide; and (iv) whether any documents exist that may be responsive to Ambac’s request for valuations done in connection with a third-party offer CRIM received in 2017 to purchase its accounts receivable portfolio.

8. AAFAF produced several documents related to the prioritized Commonwealth assets identified by Ambac this week.

9. AAFAF informed Ambac that AAFAF employees will be returning to work at AAFAF’s offices on a rotating basis pursuant to Executive Order EO-2020-066, and that AAFAF is working diligently to coordinate with other agencies to collect documents and information responsive to Ambac’s requests as soon as practicable.

September 29, 2020 (attached hereto as Exhibit D); and (v) AAFAF’s letter to Ambac dated September 30, 2020 (attached hereto as Exhibit E).

B. Status of Cash Requests (Directed Principally to the Board)

10. The Parties are continuing to negotiate in good faith regarding some of Ambac's Prioritized Cash Requests, but as previously reported, have reached an impasse on others.

i. Update Regarding Requests as to Which the Parties Continue to Make Progress.

11. The Government Parties continue to investigate whether the "Inventory of Central Government's Bank Accounts" referenced in the Amended Plan of Adjustment is in the Government Parties' possession. The Board expects to provide a document-by-document privilege log of materials withheld from its productions of factual source materials and raw data underlying the Duff & Phelps report and October 2 Presentations by October 2, 2020. Additionally, on September 27, 2020, the Board produced engagement letters related to the Duff & Phelps report and October 2 Presentations.

12. As previously noted, on August 4, 2020, Ambac served requests for admission and interrogatories on the Government Parties. On September 3, 2020, the Government Parties served their respective responses and objections to Ambac's requests for admission.⁴ On September 17, 2020, the Government Parties served their respective responses and objections to Ambac's interrogatories.⁵ The Parties are continuing to discuss the Government Parties' responses and objections and hope to resolve or narrow any disputes.

⁴ See generally *Responses and Objections of the Puerto Rico Fiscal Agency and Financial Advisory Authority to Ambac Assurance Corporation's First Set of Requests for Admission Relating to Cash Rule 2004 Discovery* dated September 3, 2020 (attached hereto as Exhibit F); *Responses and Objections of the Financial Oversight and Management Board for Puerto Rico to Ambac Assurance Corporation's First Set of Requests for Admission Relating to Cash Rule 2004 Discovery* dated September 3, 2020 (attached hereto as Exhibit G).

⁵ See generally *Responses and Objections of the Puerto Rico Fiscal Agency and Financial Advisory Authority to Ambac Assurance Corporation's First Set of Interrogatories Relating to Cash Rule 2004 Discovery* dated September 17, 2020 (attached hereto as Exhibit H); *Responses and Objections of the Financial Oversight and Management Board for Puerto Rico to Ambac Assurance Corporation's First Set*

ii. Update Regarding Requests for Which the Parties Have Reached an Impasse.

13. As stated in the September 1 Status Report, the Parties have reached an impasse with regard to Ambac's request for back-up materials containing calculations made to create the Duff & Phelps report and October 2 Presentations, including Microsoft Excel or other dynamic versions of summary charts and tables contained in those reports showing the mathematical tabulations and calculations that were performed to generate the summary charts and tables presented therein. The Parties' positions with regard to this request remain unchanged.

14. Since the September 1 Status Report, the Parties reached an impasse with respect to most of Ambac's related request for documents and communications reflecting the processes or protocols for classifying certain accounts as restricted or unrestricted. But there is one aspect of this request that the Board is continuing to consider, in particular, whether the Board is willing to provide information regarding the timeframes and specific advisors engaged in the process, notwithstanding the Board's position regarding the irrelevance of this information. As of the date of this report, the Board is not able to commit to a specific timeframe for resolving that remaining aspect of Ambac's request, but the Parties hope that it can be resolved expeditiously.

15. The Parties will refrain from addressing the substance of the dispute in this Joint Status Report but, in brief, the Board has objected to the requested discovery on relevance and privilege grounds; Ambac disagrees with the Board's relevance and privilege objections and believes the requested materials should be produced.

of Interrogatories Relating to Cash Rule 2004 Discovery dated September 16, 2020 (attached hereto as Exhibit I).

III. PROPOSED NEXT STEPS

16. As described above, although the Board and Ambac have largely reached an impasse regarding the requests for back-up materials related to the Duff & Phelps report and October 2 Presentations and process documents, the Board is still considering one aspect of the request. While Ambac reserves its right to seek judicial relief as appropriate as to any requests as to which the Parties have reached an impasse, the Parties believe it would be most efficient to present any disputes to the Court after the Board has reached a final position regarding what information it is willing to provide regarding the process documents, so that the Court can evaluate any dispute with a concrete understanding of what has been produced. Accordingly, the Parties would propose to have another meet-and-confer by October 28, 2020, and to submit a further status report to the Court on November 5, 2020. The Parties anticipate that this would provide sufficient time for the Board to assess its position on the process documents, such that the Parties will be in a position to propose a schedule for briefing the disputes regarding the Prioritized Cash Requests in the next status report.

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Dated: September 30, 2020
San Juan, Puerto Rico

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CERTIFICATE OF SERVICE

I hereby certify that on this same date a true and exact copy of this notice was filed with the Clerk of Court using the CM/ECF system, which will notify a copy to counsel of record.

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